

UNITED STATES DISTRICT COURT

for the

District of Montana

United States of America

v.

Elmer Red Eagle, Jr.

Case No: CR 07-26-GF-BMM

USM No: 07073-046

Date of Original Judgment: 10/04/2007

Date of Previous Amended Judgment: _____

(Use Date of Last Amended Judgment if Any)

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ **DENIED.** ☐ **GRANTED** and the defendant's previously imposed sentence of imprisonment (*as reflected in the last judgment issued*) of _____ months **is reduced to** _____.

(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Defendant seeks a sentence reduction under the retroactive application to the criminal history rules in Part B, subpart 1 of Amendment 821 to the United States Sentencing Guidelines. (*See Doc. 105.*) Defendant is ineligible.

Part B, subpart 1 provides a two-level offense level decrease for offenders who did not receive any criminal history points under Chapter Four and whose instant offense did not involve specific aggravating factors. *See USSG Ret. App. A & B, Sub. 1 Amendment 821 "Reasons for Amendment" (Nov. 1, 2023).* Relevant here, §4C1.1(5) requires that "the instant offense of conviction is not a sex offense." Section 4C1.1(b)(2) defines "sex offense" as "an offense, perpetrated against a minor, under (i) chapter 109A of title 18 United States Code"

Here, Defendant was convicted of Aggravated Sexual Abuse, in violation of 18 U.S.C. § 2241(c), and Sexual Abuse of a Minor, in violation of 18 U.S.C. § 2243(a). (*See Doc. 58; Doc. 1.*) Both offenses are housed under Chapter 109(A) of the United States Code. Because Defendant's offenses of conviction are sex offenses, his motion is denied.

Except as otherwise provided, all provisions of the judgment dated _____ shall remain in effect.

IT IS SO ORDERED.

Order Date: 04/04/2024



Judge's signature

Effective Date: _____
(if different from order date)

Brian M. Morris, Chief District Court Judge

Printed name and title